IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1966 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL PUNJIRAM HEMRAJ

Versus

VANKAR RANCHHOD MAGHA

Appearance:

1. First Appeal No. 1966 of 1984

MR AR MEHTA for MR RAJNI H MEHTA for Petitioner No. 1-3

MR MC BHATT for Respondent No. 1-2

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 05/12/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

#. The appellants have challenged in this appeal the impugned judgment and award dated 4.9.84 passed by the learned Motor Accident Claims Tribunal (Aux.), Mehsana in M.A.C.P. No.272/82 filed by the respondents-claimants claiming compensation of Rs.1,50,000/= on the death of their son-Bhura aged 18 during the vehicular accident, which took place on 6.6.81. Learned Tribunal partly allowed the claim petition and awarded in all Rs.69,000/= to the respondents-claimants against their claim of Rs.1,50,000/=. Respondents-claimants were satisfied with the award but the appellants were not, therefore, they have challenged the same by way of this appeal. The appellant-driver No.1 is driver of the tractor, appellant No.2 is owner and the appellant No.3 is the insurance company.

#. Vankar Ranchhod Magha-claimant-respondent No.1 was examined at Ex.28. He stated in his evidence that his son was serving as cleaner of tractor bearing No.GJU 7017 belonging to the ownership of Patel Babhai Pitamber, present appellant No.2. Patel Punjiram Hemraj Patel, present appellant No.1 driving the tractor in absolutely rash and negligent manner on 6.6.81 and all of a sudden applied brake because of that his son fell down from the tractor and crushed under the wheel of the tractor. He was removed to the V.S.Hospital at Ahmedabad where he died on 28.6.1981. Thus, after accident he suffered mental agony, trauma and torture for almost 22 days in hospital and they had to spend about Rs.7,000/= for the treatment of their son during the period of 22 days. Rs.3,000/= was paid towards funeral charges. As per his evidence his monthly income was Rs.600/= p.m. In his cross-examination, he had stated that there is nothing in writing to show the income of his deceased son was Rs.600/=.

#. At this stage, we must state that in the paper book prepared by the office everywhere the monthly income of deceased Bhura was shown as Rs.300/=. Therefore, for our satisfaction, we have verified the record to find as to whether there is any mistake in typing while preparing the paper book or not and from the record, which is made available to us we find that figure Rs.600/= p.m. is mentioned. We are justified in it because the evidence of Ranchhod Magha which was recorded by learned Member of the Tribunal in his own hand writing on 4.9.1984 and the award came to be passed by learned Tribunal within 15 days thereof viz. on 19.9.1984. From para 8 of the impugned judgment, learned Tribunal has specifically stated that "Now according to the petitioner No.1

deceased was earning about Rs.600/= p.m., but it is very clear that the petitioners have not produced any documentary proof to support their contention that the deceased was earning sum of Rs.600/= p.m.". Thus, it appears to us that while preparing paper book of this appeal some typographical error crept into and instead of Rs.600/=, Rs.300/= figure is typed in Gujarati. We are justified in drawing this inference because in original claim petition also the case of the claimants was that the income of deceased-Bhura was Rs.500/= p.m. The said claim petition is dated 5.12.1985 whereas, claimant No.1-Vankar Ranchhod Magha deposed before the learned Tribunal, after nearly 3 years of filing of the claim petition that the monthly income of his son was Rs.600/=. It is not unnatural that there is a tendency to exaggerate the claim in evidence before the court and perhaps because of that Vankar Ranchhod, father of deceased-Bhura, stated before the Tribunal that his son was earning Rs.600/= p.m. and not Rs.500/= as stated in the claim petition, which was filed in 1981. However, we are not prepared to believe that he would ever say in his evidence that too after three years of filing of the claim petition that income of his deceased son was Rs.300/= p.m. when he had clearly stated in his claim petition that income of his deceased son was Rs.500/=. Thus, we are of the clear opinion that there is a typing error crept in while preparing paper book in Gujarati where figure Rs.300/= is mentioned against Rs.600/=.

#. Learned counsel Mr.Mehta appearing for the appellants vehemently submitted that the learned Tribunal rightly considered the figure of Rs.300/= p.m. but unfortunately it had deducted only Rs.75/= out of Rs.300/=. Balance amount would come to Rs.225/= and applying multiplier of 20 awarded Rs.54,000/= under the head of pecuniary loss. He submitted that at the most the learned Tribunal could have assessed dependency of Rs.150/=p.m., which would come to Rs.1,800/= p.a. and applying multiplier of 15, the learned Tribunal could have awarded Rs.27,000/= maximum under the head of pecuniary loss. He, therefore, submitted that Rs.27,000/= be reduced under this head. There is lot of substance in the submission made by Mr.Mehta that the learned Tribunal has wrongly awarded multiplier of 15. Mr.Mehta was also right in submitting that the learned Tribunal ought not have deducted only Rs.75/= out of Rs.300/= p.m. and awarded Rs.225/= p.m. If it was so, then perhaps we would have interfered with the award. However, when there is no effective cross-examination of the claimant No.1-Vankar Ranchhod on the point of earning of deceased, then though his monthly income may not be assessed at Rs.600/= p.m. when they

have claimed Rs.500/= p.m. in the claim petition, but while awarding the amount to the claimants, the learned Tribunal has not at all taken into consideration future rise in income of the deceased. In that view of the matter, we are of the considered opinion that dependency of Rs.500/= p.m. can easily be assessed. On facts and circumstances of the case, we are of the considered opinion that Rs.250/= p.m. can be straightaway deducted out of the said amount. Thus, if the figure of Rs.250/= p.m. is taken, then it would come to Rs.3,000/= p.a. Looking to the age of the appellants and deceased, we are of the considered opinion that multiplier of at least 16 can safely be applied if not of 20, which would mean that the claimants were entitled for Rs.48,000/=, whereas, the learned Tribunal has awarded Rs.54,000/= under the head of pecuniary loss. Thus, Rs.6,000/= more was awarded under this head. However, in our considered opinion, the learned Tribunal has awarded only Rs.2,000/= by way of miscellaneous expenses and Rs.2,000/= expenses of family members, in all Rs.4,000/= was awarded against the claim of the deceased that they had actually spent Rs.7,000/=. Thus, on this ground we can easily award Rs.7,000/= in all.

#. In the instant case, it is an admitted fact that deceased-Bhura had not died on the spot at the time of accident, which took place on 6.6.81. He was literally crushed under the wheel of the tractor and was removed to V.S.Hospital at Ahmedabad where he was kept in hospital for 22 days. Therefore, we are of the considered opinion that considering the mental agony, trauma and torture suffered by deceased-Bhura Ranchhod he could be easily awarded Rs.10,000/= under the head of pain, shock and suffering. Thus, the total figure would come to Rs.70,000/= whereas the learned Tribunal has awarded Rs.69,000/=.

#. In view of the above, we are not inclined to interfere with the ultimate finding recorded by the learned Tribunal that respondents-claimants would be entitled for in all Rs.69,000/= by way of compensation from the appellants.

In view of the above discussion, this appeal fails and is hereby dismissed with costs. If the amount is still lying deposited with the bank and if the fixed deposit is renewed recently, then the respondent No.1 be permitted to withdraw the said amount with interest on it. However, we make it clear that if the fixed deposit due in near future then the respondent will be given said amount along with interest at the time of its maturity.

(B.J.Shethna, J.)

(Kundan Singh, J.)

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